



June 13, 2001

Ms. Jennifer Gilchrist
Associate General Counsel
Texas Association of Counties
P.O. Box 2131
Austin, Texas 78768-2131

OR2001-2508

Dear Ms. Gilchrist:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148385.

The Texas Association of Counties Risk Management Pool (the "pool") received a request for certain attorney fee bills, invoices, and statements concerning litigation involving Van Zandt County (the "county"). On behalf of the pool as well as the county, you claim that a portion of the requested information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. The requestor has also submitted comments to this office. *See Gov't Code § 552.304.* We have considered all of the submitted arguments and reviewed the submitted information.

We begin by addressing the requestor's argument that the pool failed to meet its deadline for requesting a decision from our office. Section 552.301 provides, in relevant part:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

The requestor indicates that it sent its request to the pool on March 22, 2001, and it assumes the pool received the request on March 23, 2001. However, the pool indicates that it received the request for information on March 27, 2001. Thus, we are faced with a factual dispute concerning when the pool received the request for information. We cannot resolve disputes of fact in the open records process, and therefore, we must rely on the representations of the governmental body requesting our opinion. Open Records Decision Nos. 554 (1990), 552 (1990). Based on the pool's representations, we conclude that the pool complied with the requirements of section 552.301.

Next, we note that the requested information is subject to section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege ...

Thus, the requested information must be released under section 552.022 unless the information is expressly made confidential under other law or protected under the attorney-client privilege. Sections 552.103 of the Government Code, the litigation exception, and section 552.107 of the Government Code, which excepts information within the attorney-client privilege, are discretionary exceptions under the Public Information Act and do not constitute "other law" for purposes of section 552.022. Open Records Decision Nos. 665 at 2 n.5 (2000) (governmental body may waive section 552.103), 630 at 4 (1994) (governmental body may waive section 552.107(1)). Therefore, the submitted fee bills may not be withheld under either section 552.103 or section 552.107 of the Government Code.

However, the attorney-client privilege is also found in Rule 503 of the Texas Rules of Evidence. Recently, the Texas Supreme Court held that "[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, No. 00-0453, 2001 WL 123933, at *8 (Tex. Feb. 15, 2001). Thus, we will determine whether the information is confidential under Rule 503.

Rule 503(b)(1) provides:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

(A) between the client or a representative of the client and the client's lawyer or a representative of the lawyer;

(B) between the lawyer and the lawyer's representative;

(C) by the client or a representative of the client, or the client's lawyer or a representative of the lawyer, to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;

(D) between representatives of the client or between the client and a representative of the client; or

(D) among lawyers and their representatives representing the same client.

Tex. R. Evid. 503(b)(1). A "client," for purposes of the attorney-client privilege, is defined as "a person, public officer, or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from that lawyer." *Id.* 503(a)(1). A "representative of a client" is defined as either:

(A) a person having authority to obtain professional legal services, or to act on advice thereby rendered, on behalf of the client, or

(B) any other person who, for the purpose of effectuating legal representation for the client, makes or receives a confidential communication while acting in the scope of employment for the client.

Id. 503(a)(2). A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication. *Id.* 503(a)(5).

Accordingly, in order to withhold attorney-client privileged information from disclosure under Rule 503, a governmental body must (1) show that the document is a communication transmitted between privileged parties or reveals a confidential communication; (2) identify the parties involved in the communication; and (3) show that the communication is confidential by explaining that it was not intended to be disclosed to third persons and that it was made in furtherance of the rendition of professional legal services to the client. Upon a demonstration of all three factors, the document containing privileged information is confidential under Rule 503 provided the client has not waived the privilege or the document does not fall within the purview of the exceptions to the privilege enumerated in Rule 503(d). *Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ).

You indicate that the pool received the legal bills from the attorneys representing the county in the case of *Looney v. Van Zandt County*, No. 00-00478 (294th Judicial District Court, Van Zandt County, Texas). You state that the pool is a representative of the county under Rule 503(a)(2)(A) because, under the agreement between the pool and the county, the pool is specifically authorized "to provide a defense for the county, including the employment of defense counsel and a claims manager." You further indicate that the fee bills contain client confidences and attorney advice between the county's attorneys and the pool, which you have marked. Based on your arguments and our review of the submitted information, we agree that each of the submitted fee bills contains privileged communications between the county's attorneys and the pool. See Tex. R. Civ. P. 503; *In re Fontenot*, 13 S.W.3d 111, 113-14 (Tex. App.--Fort Worth 2000). You state that "partial disclosure of bills for attorney's fees is appropriate." We note that, if a document contains confidential attorney-client communications, the privilege generally attaches to the entire document, not just to specific portions relating to legal advice, opinions, or mental analysis. See *Pittsburgh Corning*, 861 S.W.2d at 427. However, if the client chooses to waive the privilege, the entire document need not be withheld. The client waives its privilege if it voluntarily discloses or consents to disclosure of any significant part of the privileged information to a non-privileged party. Tex. R. Evid. 511. The requestor has provided this office with information indicating the county has released portions of the requested attorney fee bills. To the extent the county has already released or consented to the release of portions of the submitted fee bills to the requestor, it has waived the attorney-client privilege as it applies to those portions of the fee bills, and the pool must release those portions of the fee bills. See *id.* To the extent the county has not released or consented to release of the submitted fee bills, the fee bills must be withheld. See *id.* 503.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

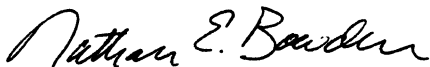
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 148385

Enc: Submitted documents

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